

Patent
Attorney Docket No.: AUS920010176US1
(IBM/0002)

REMARKS

Claims 1-30 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,726,885 issued to Klein, *et al.* Klein discloses a hire vehicle transportation system that allows a user to rent a vehicle using the system that includes automatic collection and return machines to automatically issue and collect the automobiles. (Klein, Abstract). Each vehicle is equipped with a satellite locating device that can track the vehicle at all times and calculate the mileage driven during the rental period. (Klein, col. 6, lines 1-12). A vehicle chip card is used by the renter when returning the car to identify the car to the automatic collection and return machines, which transfers the information from these machines to the control center where the final bill is determined. (Klein, col. 8, lines 13-26).

Applicant claims a system, computer program and a method that include, *inter alia*, varying a rate schedule of the device during use. (Claims 1, 11 and 21). Claims 1, 11 and 21 have been amended to include the limitation of dependent claims 6, 16 and 26. Applicant has cancelled claims 6, 16 and 26.

MPEP § 2131 provides:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsisimilis verbis* test, *i.e.*, identity of terminology is not required. *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990).

Applicant respectfully asserts that a *prima facie* case of anticipation has not been presented because Klein does not expressly or inherently describe the limitation claimed by Applicant of "varying a rate schedule of a device during use." The Examiner asserts that the rate for renting the car in Klein is inherently variable because the longer you rent the car, the more you pay overall.

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(Office Action, p. 2, ¶2). However, the Merriam-Webster Dictionary defines rate as:

3. a fixed ratio between two things b : a charge, payment, or price fixed according to a ratio, scale, or standard: as (1) : a charge per unit of a public-service commodity (2) : a charge per unit of freight or passenger service (3) : a unit charge or ratio used by a government for assessing property taxes (4) British : a local tax
4 a : a quantity, amount, or degree of something measured per unit of something else b : an amount of payment or charge based on another amount; specifically : the amount of premium per unit of insurance

“Rate” is therefore commonly defined and commonly used as a fixed ratio or a quantity, amount or degree of something measured per unit of something else. As disclosed in the Specification, “In a preferred embodiment, the rate schedule includes instructions for adjusting the rate charged to users on the basis of current demand for the equipment being used.” (Specification, page 12, lines 16-17). While the total bill for renting the automobile increases during the rental period of the automobile, Klein does not disclose that the *rate* increases during the rental period of the automobile while the automobile is being used.

Therefore, because Klein does not describe each and every limitation claimed by Applicant and thereby does not support a *prima facie* case of anticipation, Applicant respectfully requests reconsideration and withdrawal of the rejection for independent claims 1, 11 and 21 and all dependent claims depending therefrom.

Specifically addressing the rejection of dependent claims 10, 20 and 30, Applicant has not found that Klein describes, either expressly or inherently, “displaying the user fee on the device during use.” The Examiner does not mention this element of these claims in the Office Action. Therefore, because Klein does not describe each and every limitation claimed by Applicant and thereby does not support a *prima facie* case of anticipation, Applicant respectfully requests reconsideration and withdrawal of the rejection for dependent claims 10, 20 and 30.

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Claims 1-30 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,956,697 issued to Usui. Usui discloses a timer-based fee-charging system for Internet services as well as payments of usage fees and subscription rights. (Usui, Abstract). Like Klein, discussed in the remarks, *supra*, Applicant fails to find that Usui describes, either expressly or inherently, "varying a rate schedule of the device during use." which is an element claimed by Applicant. (Claims 1, 11 and 21). The Examiner does not expressly address this element in the rejection under Usui though Applicant assumes the same analysis used by the Examiner for "rate" under Klein is also used under Usui. Applicant's remarks made under Klein, *supra*, concerning the use of "rate" is applicable under Usui.

Therefore, because Usui does not describe each and every element claimed by Applicant and thereby does not support a *prima facie* case of anticipation, Applicant respectfully requests reconsideration and withdrawal of the rejection for independent claims 1, 11 and 21 and all dependent claims depending therefrom.

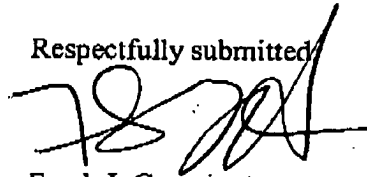
Specifically addressing the rejection of dependent claims 10, 20 and 30, Applicant has not found that Usui describes, either expressly or inherently, "displaying the user fee on the device during use." The Examiner does not mention this element of these claims in the Office Action. Therefore, because Usui does not describe each and every limitation claimed by Applicant and thereby does not support a *prima facie* case of anticipation, Applicant respectfully requests reconsideration and withdrawal of the rejection for dependent claims 10, 20 and 30.

Claims 31 and 32 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,916,063 issued to Alessandri. Applicant has amended claim 31 to make it depend from claim 1. Since Alessandri does not disclose that the processor is configured to vary the rate schedule of the device during use, as claimed in independent claim 1, Alessandri does not support a *prima facie* case of anticipation. Reconsideration and withdrawal of the rejection is respectfully requested.

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Applicant respectfully asserts that all claims are now in condition for allowance and requests that a Notice of Allowance be timely issued. Should the Examiner believe that the examination of this application may be expedited by a telephone interview, the Examiner is invited to telephone the below signed attorney at the convenience of the Examiner. In the event there are additional charges in connection with the filing of this Response, the Commissioner is hereby authorized to charge the Deposit Account No. 50-0714/IBM/0002 of the firm of the below-signed attorney in the amount of any necessary fee.

Respectfully submitted



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